

1 Q And when did you make that decision?

2 A The final decision on my part wasn't until the --
3 I signed the application on the 28th and that's when, I
4 guess you could say, the final decision was. I still
5 could have pulled it out any time up until the 30th.

6 Q Were you ambivalent about filing an application?

7 A No.

8 Q Was there some reason -- was there some reason
9 why you waited until the 28th to make the decision to go
10 forward?

11 A It wasn't until that point that Wireless made
12 their final decision.

13 Q Not to go forward?

14 A That's correct.

15 Q How was it communicated to you that Wireless had
16 decided not to go forward?

17 A I don't recall exactly. I believe it was in a
18 telephone conversation with J.C.

19 Q Do you remember what he said?

20 A I really don't.

21 Q And you think this telephone conversation
22 happened on the 28th of --

1 MR. FRIEDMAN: He didn't testify to that.

2 BY MR. SMITHWICK:

3 Q I'm sorry. I don't want to mischaracterize your
4 testimony. Do you believe this telephone conversation
5 occurred on the 28th of April 1992?

6 A I really can't remember the days that the
7 different things happened back in that end of that month.

8 Q Well, do you have any recollection that the
9 phone call from Mr. Van Ginkel occurred -- or the phone
10 call with Mr. Van Ginkel occurred within a day or two of
11 the date on which you signed your application?

12 A Certainly within that time frame, within a few
13 days of it.

14 Q Okay. A few days or a day or two?

15 A Well, I would say a few days. There were, you
16 know, several conversations with him during that period,
17 but what was said, I don't recall.

18 Q Well, did Mr. Van Ginkel actually suggest that
19 you file the application instead of Wireless?

20 A No.

21 Q Well, were there any alternatives for anyone,
22 other than you to file an application for Audubon other

1 than Wireless?

2 A Please repeat the question.

3 Q Was there any discussion of Mr. Christensen
4 filing an application for Audubon?

5 A I don't know of any discussions whether he
6 considered it or not. I just know that I was the one who
7 did.

8 Q Can you tell me the substance of the
9 conversations with Mr. Van Ginkel. When -- can you
10 remember the substance of the conversation you had with
11 Mr. Van Ginkel when, after the conversation was over, you
12 decided to go forward and file the application?

13 A He was able to answer some of my questions as to
14 what the feasibility of it would be and he is
15 essentially -- the content of the conversations I can't
16 recall exactly.

17 Q Did he write you any letters about the --
18 summarize the conversations?

19 A No.

20 Q Did you make any notes or memoranda about the
21 conversation?

22 A No.

1 Q Have you ever discussed the status of your
2 application with any of the other principles of Wireless,
3 I mean stockholders, officers, directors? Have you
4 discussed the status of your application with those
5 principles?

6 A Only that it exists and the -- what's public.

7 Q Do you keep Mr. Van Ginkel informed of how
8 things are going at the FCC?

9 A Yes, sir.

10 Q How often do you talk to Mr. Van Ginkel about
11 your application?

12 A That's a hard thing to answer because there are
13 months that go by where nothing is happening, but when
14 things are happening, we talk certainly once a week.

15 Q Well, things are happening now, right?

16 A Yes.

17 Q So when was the last time you talked to
18 Mr. Van Ginkel about your application?

19 A I believe I talked to J.C. late last week. I
20 don't remember whether it was Thursday or Friday.

21 Q Have you talked to him this week?

22 A No.

1 Q Have you ever received any advice about how you
2 should prosecute your application from any of the -- from
3 any Wireless principal?

4 A Only in answer to my questions as to what is a
5 deposition.

6 Q Why would you ask -- did you ask Mr. Van Ginkel
7 what a deposition is?

8 A I don't believe I asked him those words, but
9 just to -- I asked him if he could tell me what I might
10 expect.

11 Q Mr. Van Ginkel is an attorney; is that right?

12 A That's correct.

13 Q Is that why you asked him what you might expect
14 in a deposition?

15 A Yes.

16 MR. SMITHWICK: Let the record reflect I'm
17 giving the witness's counsel a copy of what appears to be
18 Mr. Hazelton's application and I'd like to go off the
19 record for a minute and give Mr. Hazelton an opportunity
20 to look it over and examine it and make sure that it is,
21 in fact, a copy of his application.

22 (Discussion off the record.)

1 very well and I knew he had property in there.

2 Q Right, but what I'm trying to establish is how
3 you came to contact Mr. Smith as the site owner. When did
4 you first -- when did it first come to your attention that
5 you should contact Mr. Smith about the site?

6 A First time is when I realized was the site
7 needed to be located.

8 Q When was that?

9 A It was soon after the FCC released the
10 information, and I can't remember when the information
11 from Mr. Markley indicated that that particular site would
12 work, and then knowing that Mr. Smith has property in that
13 area, I went from there.

14 Q But when you were searching for the site were
15 you not searching for the site on behalf of Wireless?

16 A There again, that was primarily being done by
17 J.C. for on Wireless's behalf and it's --

18 Q But you said you knew to contact Mr. Smith
19 because he had property in the area, right?

20 A I knew he had property up in that area, yes.

21 Q And you learned that from Mr. Van Ginkel?

22 A Whether it was the first time that I knew it was

1 Mr. Smith on April 29, 1992?

2 A Yes.

3 Q Did you have any meeting with Mr. Smith prior to
4 April 29, 1992?

5 A Yes.

6 Q When was the first meeting you had with
7 Mr. Smith prior to April 29, 1992?

8 A I do not know. I don't know the exact date.

9 Q Well, do you know if it was?

10 A Again, it was all within that --

11 Q Couple days?

12 A -- within that few-day period there toward the
13 end when I was seriously looking at putting this together.

14 Q Was it before April 28, 1992?

15 A I don't know.

16 Q All right.

17 Q Now, you employed an engineer to prepare the
18 engineering portions of your application, did you not?

19 A Yes.

20 Q And who is that engineer?

21 A Don Markley.

22 Q This is the same Don Markley that you referred

1 to earlier who assisted on the engineering for the
2 petition of rulemaking; is that correct?

3 A That's correct.

4 Q And does Mr. Markley do engineering on behalf of
5 KJAN?

6 A Yes.

7 Q Does KJAN use any other consulting engineers
8 other than Mr. Markley?

9 A They have in the past used some, but not for
10 many years.

11 Q Since Wireless has owned KJAN, have they used
12 Mr. Markley exclusively to do consulting engineering work?

13 A I believe so. There might have been some
14 consulting work done by another engineer, but I believe
15 Mr. Markley has been the one.

16 Q Did you select Mr. Markley to do the engineering
17 for the Audubon application?

18 A Yes.

19 Q Had Mr. Markley already prepared the engineering
20 on behalf of Wireless when you decided to use him?

21 A He had done some. I don't know what the extent
22 was because I didn't see those.

1 Q Okay. Did you select Mr. Markley to represent
2 you in doing the engineering work?

3 MR. FRIEDMAN: I believe it was asked and
4 answered.

5 MR. SMITHWICK: I think the question was
6 Mr. Markley helping and the answer was, yes.

7 MR. FRIEDMAN: All right.

8 MR. SMITHWICK: The question I'm asking is did
9 you -- did the witness select Mr. Markley. It's a
10 different question.

11 MR. FRIEDMAN: Okay.

12 THE WITNESS: Yes.

13 BY MR. SMITHWICK:

14 Q Did you consider any other engineer?

15 A No.

16 Q Did anyone suggest that you use Mr. Markley?

17 A I don't recall anybody suggesting it. I would
18 not have used anyone else.

19 Q Have you paid Mr. Markley for his services?

20 A Yes, sir.

21 Q Now, Mr. Friedman is representing you in this
22 proceeding, is he not?

1 that handy. And Exhibit Number 4 your application says
2 "The applicant proposes to install, maintain, and operate
3 auxiliary equipment," does it not?

4 A Yes, it does.

5 Q Does the Continental Electronics' equipment bid
6 include provision for that auxiliary power unit?

7 A I don't recall.

8 Q Okay. Did any of the principles of Wireless
9 give you any help in preparing Deposition Exhibit Number
10 4?

11 A I don't believe so. I prepared the budget
12 totally myself. I may have asked for some advice from
13 Mr. Van Ginkel about the purchase about the tower site
14 price value.

15 MR. FRIEDMAN: Should I give it back to her?

16 MR. SMITHWICK: Yes.

17 BY MR. SMITHWICK:

18 Q Now, getting back to page 5. You produced --
19 your lawyer produced a document from the First Whitney
20 Bank & Trust Company, did he not?

21 A That's correct.

22 Q And the document is dated April 29, 1992,

1 addressed to you from Frank W. Greiner, executive vice
2 president of the First Whitney Bank & Trust?

3 A That's correct.

4 Q Do you have the document before you?

5 A Yes.

6 MR. SMITHWICK: Let's make this Deposition
7 Exhibit Number 5, please.

8 (Deposition Exhibit 5 identified.)

9 BY MR. SMITHWICK:

10 Q Now, page -- let me go back to this now. Did you
11 have a role to play in obtaining Deposition Exhibit Number
12 5 from the First Whitney Bank & Trust Company?

13 A Yes, sir.

14 Q And what did you do to obtain this letter?

15 A I can't recall all the steps. I see Mr. Greiner
16 regularly and with -- tried to, with the help of the
17 information that Wireless had on what would be required in
18 a bank letter, this was put together.

19 Q I didn't quite understand your response. With
20 the information Wireless had, what information did
21 Wireless have?

22 A What the Commission required in a satisfactory

1 bank letter.

2 Q Are you saying that originally a bank letter was
3 going to be prepared for Wireless, but then when you
4 decided to go forward, they changed Wireless's name to
5 your name?

6 A I didn't know what the Commission required in a
7 bank letter and with the help of, again, the information
8 that Wireless had put together with Mr. Van Ginkel, work
9 with Mr. Greiner to put this together.

10 Q So when did you first have occasion to meet with
11 Mr. Greiner about getting a letter -- about getting
12 Deposition Exhibit Number 5?

13 A I don't know when I would have talked to him.
14 Like I say, I see him on a regular basis. One,
15 specifically I asked him specifically to write the
16 letter. I don't recall -- it would have been, there again,
17 in that same time frame because it was all within those
18 few days that I made the decision to apply.

19 Q Well, the letter dated is dated April 29, 1992,
20 is it not?

21 A Yes.

22 Q Is that when you asked Mr. Greiner to write the

1 letter?

2 A Within a day or two. Whether he wrote it that
3 day, I don't recall.

4 Q Did you go have -- did you actually go to First
5 Whitney Bank & Trust and sit down and have a meeting with
6 Mr. Greiner?

7 A Yes.

8 Q And when did you have that meeting?

9 A At some point toward the end of that month, I
10 really don't recall exactly. I don't want to give you a
11 wrong date.

12 Q I don't want you to give me a wrong date
13 either.

14 A But it was in the time period that this was put
15 together by him when I asked him.

16 Q Now, you say you actually met with Mr. Greiner.
17 Did you take any papers with you when you met with
18 Mr. Greiner?

19 A No, I would not have needed to take any papers
20 with me.

21 Q Why would you not?

22 A He's been my banker. He has all my papers to

1 make this letter.

2 Q Did you take him like a business plan or your
3 budget, anything like that?

4 A No. There again, some of this was with the help
5 of Mr. Van Ginkel.

6 Q Did Mr. Van Ginkel meet with Mr. Greiner before
7 you met with Mr. Greiner for the purpose of obtaining a
8 letter?

9 A I don't know.

10 Q Well, you say that some of this was with the
11 help of Mr. Van Ginkel. How did Mr. Van Ginkel help you?
12 I guess that's what I want to know.

13 A He also is very close with Mr. Greiner and
14 having the information on what would be required in a
15 letter to satisfy this requirement by the Commission, he
16 was able to provide specific help to Mr. Greiner for
17 wording. I think that's the way -- I don't want to, you
18 know, but that's -- he was a lot more aware of what was
19 required in this letter than I.

20 Q Well, in some cases, I don't guess it's any
21 secret that there's a form letter. You give it to the
22 bank, the banker reviews it. If the banker can live with

1 it, he signs it on his letterhead. Is that what you're
2 talking about here?

3 A I don't know.

4 Q Now, this page 6 of Deposition Exhibit Number 2
5 reflects only the Whitney Bank & Trust Company as being
6 the sole source of financing for your project; is that
7 right?

8 A Yes.

9 Q Now, your lawyer turned over, pursuant to the
10 request from us, copies of checks that you had written on
11 behalf of your application. Are you aware of that?

12 A Yes.

13 Q And those are checks on your personal account,
14 are they not?

15 A Yes.

16 Q Is that the only account from which you write
17 checks to pay the expenses of your application?

18 A I believe that is only account I've used for
19 expense of the application.

20 Q Are you sure?

21 A Yes. I'm not aware of any other -- of any other
22 account that's been used for anything to do with this

1 application.

2 Q Are you the only person who can sign the checks?

3 A I don't remember if my wife is on that account
4 or not. I believe I am.

5 Q And I hope I'm not asking the same question
6 twice. If I am, Mr. Friedman will very quickly point it
7 out.

8 Are all the bills that are generated by virtue
9 of this application paid out of that checking account.

10 MR. FRIEDMAN: Sure sounds like the same
11 question, but answer it so he has his answer.

12 THE WITNESS: Yes, yes.

13 MR. SMITHWICK: I'm ashamed of that question.

14 MR. FRIEDMAN: Don't be ashamed.

15 BY MR. SMITHWICK:

16 Q If I refer to Wireless Communications
17 Corporation and its stockholders, directors and officers,
18 just as KJAN, will you understand my questions in that
19 context?

20 A Yes.

21 Q Fine. I don't want to confuse you, but that's
22 going to make it easier if I just lump the whole ball of

1 wax into KJAN.

2 Let me show you copies of checks that your
3 lawyer produced. Could you look those over very quickly.
4 Please take as much time as you want, really.

5 A Okay.

6 MR. SMITHWICK: Let's make this Deposition
7 Exhibit 6, please.

8 (Deposition Exhibit 6 identified.)

9 BY MR. SMITHWICK:

10 Q Now, Mr. Hazelton, I'm showing you what's been
11 marked as Deposition Exhibit 6, and these are copies of
12 checks produced by your attorney, are they not?

13 A Yes.

14 Q All right. And they are on your account,
15 individual account. They don't appear to be in the name
16 of any joint parties.

17 A Right.

18 Q And the checks are -- there is a check to the FCC
19 for \$6760. That's your check number 107. There's check
20 number 101 to Wireless Communications for \$2300 and I
21 assume that's to reimburse them for the filing fee of the
22 application; is that right?

1 obliterated from those deposit tickets. Could I get
2 counsel to get us the dates for the deposit tickets?

3 MR. FRIEDMAN: Uh-huh.

4 BY MR. SMITHWICK:

5 Q As far as you know, Mr. Hazelton, were the
6 deposits made about the same time the notes were signed?

7 A Yes.

8 Q And when you signed a note, did KJAN give you a
9 check for the amount of the note which you then deposited
10 in your account?

11 A Wireless did, yes.

12 Q Wireless did. That's fine.

13 MR. SMITHWICK: Let's make that Deposition
14 Exhibit 8.

15 (Deposition Exhibit 8 identified.)

16 BY MR. SMITHWICK:

17 Q Now, what is this money being used for?

18 A That money was paid out in the cost of the
19 application.

20 Q Okay. Now, have you spent any of your own
21 personal funds, connected with the application, that have
22 not either been reimbursed by KJAN or borrowed from KJAN?

1 or not. I'm primarily using it for the application
2 process.

3 Q And have you deposited any money in this account
4 that was not borrowed from KJAN?

5 A Yes.

6 Q And was that money reimbursed by KJAN?

7 A I don't understand the question.

8 Q Well, for example, when you filed your
9 application, KJAN paid the filing fee but you reimbursed
10 them; isn't that correct?

11 A I would rather look at it that I borrowed
12 borrowed the money essentially.

13 Q Okay. Is the \$2030 that was borrowed, is that
14 reflected in one of these promissory notes?

15 A Yes.

16 Q Okay. So you borrowed the money from KJAN, but
17 you took that money and reimbursed KJAN, did you not?

18 A Yes, I believe that would be a correct way of
19 saying it.

20 Q Because I believe there is a letter saying
21 somewhere that Mr. Van Ginkel wrote, authorizing
22 Mr. Friedman to apply trust funds that belong to KJAN to

1 understand that you consider the money you borrow to be
2 your money?

3 A Yes.

4 Q That's your money that you're putting in there
5 because you borrowed it and KJAN signed a note for it;
6 right? What I'm trying to find out is is there any other
7 money that you put in that account that was spent on your
8 application that you didn't borrow from KJAN?

9 A I don't recall know how to answer that because I
10 do have personal money in that account and whether --

11 Q But did you borrow the personal money from KJAN?

12 A No, no.

13 Q Can you tell me as a percentage -- there is no
14 financial issue in this case so I'm not asking you about
15 dollar amounts and I'm not going to ask you about dollar
16 amounts. That's all why all this stuff is masked.

17 But as a percentage of the amount of money this
18 has been loaned to you by KJAN and the amount of money
19 that you put in that account that you didn't borrow from
20 KJAN, can you give me a percentage of how much you put in
21 that you did not borrow from KJAN?

22 A Very small.

1 Q Less than 1 percent?

2 A I don't have a calculator. You know, that would
3 probably be --

4 Q Less than 1 percent was your own money?

5 A That's a guess based on just sitting here
6 thinking.

7 Q Is that close?

8 A Pencil out?

9 Q Less than 5 percent?

10 A Well, certainly less than 5 percent.

11 Q Okay. Let me show you a letter, also produced
12 by your attorney, dated February 1, 1994, and it is on the
13 letterhead of Kluever, Van Ginkel & Trewet, or is it
14 "true-it"?

15 A "True-it," Trewet.

16 Q Attorneys at law, and it is signed -- it is a
17 letter addressed to you and it is simply signed J.C.
18 Would that be J.C. Van Ginkel?

19 A Yes.

20 Q And this letter describes a meeting you had on
21 February 1, 1994 with Mr. Van Ginkel; is that correct?

22 A Yes.

1 Q So you --

2 A My arrangement is clear with them.

3 Q Have you paid any -- let me strike that.

4 These notes which are Deposition Exhibit 8 do
5 bear interest, do they not?

6 A Yes, they do.

7 Q And have you paid any interest to KJAN as a
8 result of those notes?

9 A We have a verbal understanding that these are
10 carried forward and that was part of his reason for
11 clearing that up in here, so there not --

12 Q Is the answer you haven't paid any interest?

13 A That would be correct.

14 MR. SMITHWICK: Let's make this Deposition
15 Exhibit Number 9.

16 (Deposition Exhibit 9 identified.)

17 (Discussion off the record.)

18 BY MR. SMITHWICK:

19 Q Now, is this -- this discussion you had with
20 Mr. Van Ginkel and Mr. Christensen, was anyone there
21 besides Mr. Van Ginkel and Mr. Christensen and you?

22 A That morning, prior to their discussion, it was

1 BY MR. SMITHWICK:

2 Q So this loan or these loans that KJAN is willing
3 to make to you, are they strictly to pay the cost of the
4 application?

5 A I'm using them mostly for that. I mean it's --
6 yes, I probably would not be borrowing those funds were it
7 not for this application process.

8 Q Do you have an arrangement to pay this money
9 back if you don't get the construction permit?

10 A Yes.

11 Q And do you not have to pay it back if you don't
12 get the construction permit?

13 A I certainly need to pay it back.

14 Q If you don't get the construction permit, do you
15 still have to pay the money back?

16 A Yes, I would expect to have to pay the money
17 back.

18 Q How quickly would you have to pay the money
19 back?

20 A I don't know. I would expect when it's due.

21 Q When is it due?

22 A That promissory note has not been --

1 Q It says "all interest and principal shall be
2 paid on or before" something. When is it due?

3 A I don't know what the date is, but there again,
4 it has to do with the carrying forward of this, verbally
5 between Wireless and I.

6 MR. SMITHWICK: Could we get the date of when
7 it's due?

8 MR. FRIEDMAN: I don't know if there's any
9 relevance to the date when it's due.

10 MR. SMITHWICK: Let me just ask you, are you
11 objecting to producing that information on the grounds of
12 relevance?

13 MR. FRIEDMAN: Yes.

14 MR. SMITHWICK: I'm not -- I just want to state
15 on the record I'm not waiving my right to pursue that
16 particular bit of information. We may need to discuss it
17 later after the deposition is over or we may decide to
18 pursue it in another manner. But I want to make it clear
19 I am not waiving that in this deposition.

20 MR. FRIEDMAN: Fine.

21 BY MR. SMITHWICK:

22 Q So would the money borrowed from KJAN, in

1 addition to being used to pay prosecution expenses of your
2 application, would it also be used to meet any cash
3 injection requirements that the Whitney Bank might have?

4 A I don't know.

5 Q Do you know if the Whitney Bank has -- do you
6 know what a cash injection requirement is?

7 A I'm not sure what you are referring to.

8 Q Well, for purposes of definition, sometimes
9 banks have a requirement that in order for them to loan
10 you money, you have to put a certain amount of your own
11 money into the project. You understand? You ever heard
12 of that kind of thing?

13 A Sure.

14 Q Do you know if the Whitney Bank has a
15 requirement like that?

16 A I don't know.

17 Q You don't know. Have you ever discussed any
18 such requirement with Mr. Greiner?

19 A We have not discussed the specifics of that end
20 of it.

21 Q Now I'll show you a document which has as its
22 head "Agreement," and this was produced by your counsel.